IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAMERON D. REED,	:	CIVIL ACTION
	:	NO. 03-4010
Plaintiff,	:	
	:	
v.	:	
	:	
MEDICAL COLLEGE (TENET),	:	
	:	
Defendant.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J. DECEMBER 10, 2004

Plaintiff, Cameron Reed, brought this action pro se against Tenet Healthsystem MCP, LLC, which does business as the Medical College of Pennsylvania Hospital.[1] Plaintiff is a former employee of Medical College. Plaintiff's complaint, construed liberally, alleges a violation of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq. Specifically, plaintiff contends that Medical College wrongfully terminated his employment because he suffers from depression. Medical College has filed a motion for summary judgment. Medical College argues that plaintiff does not have a "disability" within the meaning of the ADA, and even if he did, he has produced no evidence to show that he was fired because of his disability. Therefore,

[1] The defendant will hereinafter be referred to as "Medical College" or "defendant."

according to defendant, there is no genuine issue of material fact, and based on the uncontested facts, Medical College is entitled to judgment as a matter of law. For the reasons that follow, the Court will grant the motion for summary judgment.

I. FACTUAL BACKGROUND

Plaintiff was employed by Medical College for a ten-year period. He worked as a part-time cafeteria aide from 1990 to 1999, and for the last year of his employment, he worked full time in the environmental services department. Medical College terminated plaintiff's employment on May 12, 2000, following an altercation between plaintiff and a co-worker on that date.

The details of the May 12, 2000 altercation follow. Plaintiff and co-workers Earl Nelson, Carla Johnson, and Marlo June were carrying on a conversation about the National Basketball Association (NBA) playoffs in Ms. June's office. At some point during the conversation, Ms. June asked plaintiff to leave her office because she was concerned that she might be reprimanded for engaging in this conversation for such an extended period of time.

In response to Ms. June's request that he leave, plaintiff told Ms. June that she was not the boss of him and then shouted certain profanities at her. While shouting the profanities, plaintiff also began to approach Ms. June while she

was seated behind her desk, but Mr. Nelson physically intervened. Ms. June complained to management about the incident, and plaintiff's employment was terminated later that day.[2]

On several occasions following plaintiff's discharge, plaintiff contacted Cecil Reed, the employee labor-relations manager at Medical College. Plaintiff discussed the incident with Cecil Reed and asked to be reinstated to his former position. Plaintiff admitted to Cecil Reed that he used profanity toward Mr. June, but asserted that he was justified in doing so because she swore at him first.[3]

Plaintiff did not work for two and one-half years following his discharge. He is currently working at Deliverance Church, where he performs housekeeping tasks that he states are

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[2] Following the termination of plaintiff's employment, Medical College conducted an investigation to determine the validity of plaintiff's discharge. The investigation included interviewing Ms. June, Mr. Nelson, Ms. Johnson, and plaintiff. Mr. Nelson's and Ms. Johnson's versions of the altercation mirrored Ms. June's. Medical College then scheduled a grievance hearing to permit plaintiff to explain his version of the altercation. The first grievance hearing had to be rescheduled, however, because plaintiff attended the hearing in an intoxicated state. The record does not reveal if a second hearing occurred.

[3] In addition to the May 12, 2000 incident that gave rise to plaintiff's discharge, plaintiff had previously engaged in similar unprofessional behavior while working at Medical College. In March 1997, Mr. Reed verbally abused a female co-worker by, among other things, threatening to have his girlfriend assault the co-worker if she did not work a particular shift for plaintiff. Plaintiff was disciplined for this behavior and was specifically advised that his employment would be terminated if he exhibited similar behavior in the future.

identical to those he performed at Medical College.

II. PROCEDURAL HISTORY

Plaintiff brought this action pro se on July 10, 2003, alleging that Medical College terminated his employment because he suffered from depression.[4] Medical College filed a motion to dismiss for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), arguing that plaintiff's complaint stated a cause of action not under federal law, but under the Pennsylvania common law prohibiting wrongful dismissal.

On November 20, 2003, the Court denied the motion, reasoning that under a liberal construction of plaintiff's complaint, plaintiff has stated a claim under the ADA. The Court also ordered Medical College to depose plaintiff and file a motion for summary judgment by February 19, 2004, and the Court ordered plaintiff to respond or make a request for further discovery by March 19, 2004. Because plaintiff was attempting to retain counsel, the Court extended the time for defendant to depose plaintiff and file a motion for summary judgment to May 19, 2004, with plaintiff's response or request for further discovery due by June 21, 2004.

Medical College deposed plaintiff on April 15, 2004,

[4] In 1995, plaintiff sought treatment for depression at Horsham Clinic. He has been taking prescribed medication to treat his depression ever since.

and filed a motion for summary judgment on May 18, 2004. In response to a letter to the Court from Cameron Reed, the Court extended the time within which plaintiff could respond to the motion for summary judgment to August 1, 2004.

Plaintiff has failed to respond as of the date of this Memorandum. When a party fails to timely respond to a motion for summary judgment, the Court should adjudicate the merits of the motion "solely on the basis of the evidence [the moving party] presented in its motion." Lorenzo v. Griffith, 12 F.3d 23, 27-28 (3d Cir. 1993); see also Anchorage Assocs. v. V.I. Bd. of Tax Review, 922 F.2d 168, 174 (3d Cir. 1990). The Court will accordingly decide the merits of this matter based upon the facts established by Medical College and the record before the Court.

III. THE LEGAL STANDARD

A court may grant summary judgment only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is "material" only if its existence or non-existence would affect the outcome of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). An issue of fact is "genuine" only when there is

sufficient evidence from which a reasonable jury could find in favor of the non-moving party regarding the existence of that fact. Id. In determining whether there exist genuine issues of material fact, all inferences must be drawn, and all doubts must be resolved, in favor of the non-moving party. Coregis Ins. Co. v. Baratta & Fenerty, Ltd., 264 F.3d 302, 305-06 (3d Cir. 2001) (citing Anderson, 477 U.S. at 248).

Although the moving party bears the burden of demonstrating the absence of a genuine issue of material fact, in a case such as this, where the non-moving party is the plaintiff and, therefore, bears the burden of proof at trial, that party must present affirmative evidence sufficient to establish the existence of each element of his case. Id. at 306 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)). Accordingly, a plaintiff cannot rely on unsupported assertions, speculation, or conclusory allegations to avoid the entry of summary judgment, see Celotex, 477 U.S. at 324, but rather, the plaintiff "must go beyond pleadings and provide some evidence that would show that there exists a genuine issue for trial." Jones v. United Parcel Serv., 214 F.3d 402, 407 (3d Cir. 2000).

IV. ANALYSIS

Plaintiff alleges that Medical College discriminated

against him by firing him because he suffered from depression. Plaintiff's cause of action arises under the ADA. Section 12112(a) of the ADA provides that:

> No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

42 U.S.C. § 12112(a). The relevant provision of the ADA defines a "qualified individual with a disability" as a person "with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." Id. § 12111(8).

For plaintiff to establish a prima facie case of discrimination under the ADA, he must prove "(1) he is a disabled person within the meaning of the ADA; (2) he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the employer; and (3) he has suffered an otherwise adverse employment decision as a result of discrimination." Williams v. Phila. Housing Auth. Police Dep't, 380 F.3d 751, 761 (3d Cir. 2004) (citations omitted).

For plaintiff to prove he has a "disability" within the meaning of the Act, he must prove that he (1) has a physical impairment that substantially limits one or more of his major life activities, (2) has a record of such an impairment, or (3)

is regarded as having such an impairment. 42 U.S.C. § 12102(2); Toyota Motor Mfg., Kentucky, Inc. v. Williams, 534 U.S. 184, 187 (2002).

A. Actual Disability

Because depression is not a per se disability, see, e.g., Albertson's Inc. v. Kirkingburg, 527 U.S. 555, 566 (1999), the relevant inquiry is whether plaintiff's depression substantially limits him in a major life activity.[5] The record is devoid of any evidence that plaintiff's depression

[5] A "physical or mental impairment" is "[a]ny physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine." 29 C.F.R. § 1630.2(h).

The term "substantially limits" means:
"(i) Unable to perform a major life activity that the average person in the general population can perform; or
(ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." Id. § 1630.2(j)(1).

"'Major life activities' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." Id. § 1630.2(h)(2)(I).

A court should consider the following factors in determining whether an individual is substantially limited in a major life activity: "(I) The nature and severity of the impairment; (ii) The duration or expected duration of the impairment; and (iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment." Id. § 1630.2(j)(2).

substantially limits any specific life activity. Plaintiff testified in his deposition that he currently works nine hours per day, seven days per week, at Deliverance Church, where he performs the same housekeeping duties he performed at Medical College, e.g., cleaning bathrooms, buffing floors, and taking out the trash. (Dep. of Pl. at 18.). Plaintiff has also offered no evidence to show that his depression substantially limits a major life activity outside of work. Indeed, when referring to his depression, plaintiff stated, "I can deal with it off the job because I have no one to answer to, but when I come to the job it is a whole different scene." (Dep. of Pl. at 40). Because plaintiff has not shown that his depression substantially limits a major life activity, he has no actual disability as a matter of law.[6]

B. Regarded as Disabled

The relevant EEOC regulations state that "being regarded as having an impairment" means that the plaintiff:

(A) has a physical or mental impairment that

[6] Similarly, plaintiff does not have a record of a disability, as a matter of law. To prove the existence of a record of a disability, plaintiff must prove that the impairment of which he has a record constitutes a "disability" within the meaning of the ADA. See Tice v. Centre Area Transp. Auth., 247 F.3d 506, 513 (3d Cir. 2001). Even if plaintiff could offer evidence to show that he has a record of depression, because his depression does not substantially limit any of his major life activities, he cannot prove that he has a record of a disability.

> does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;
> (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
> (C) has none of the impairments defined in paragraph (j)(2)(I) of this section but is treated by a recipient as having such an impairment.

29 C.F.R. § 1630.2(l); see also Williams v. Phila. Hous. Auth. Police Dep't, 380 F.3d 751, 766 (3d Cir. 2004).

Plaintiff argues that Medical College fired him because he suffered from depression, and Medical College knew about the depression. Plaintiff offered no evidence in support of his contention that those who decided to fire him knew about his depression. Even assuming, however, that the decisionmakers knew of his depression, the "mere fact that an employer is aware of an employee's impairment is insufficient to demonstrate either that the employer regarded the employee as disabled or that that perception caused the adverse employment action." Kelly v. Drexel Univ., 94 F.3d 102 (3d Cir. 1996). As the Supreme Court has stated, for a plaintiff to state a claim under a "regarded as" theory,

> it is necessary that a covered entity entertain misperceptions about the individual--it must believe either that one has a substantially limiting impairment that one does not have or that one has a substantially limiting impairment when, in fact, the impairment is not so limiting. These

> misperceptions often "resul[t] from stereotypic assumptions not truly indicative of ... individual ability."

Sutton v. United Air Lines, Inc., 527 U.S. 471, 489 (1999) (citations omitted). Plaintiff has offered no evidence to show that Medical College maintained any such misperception. Accordingly, plaintiff is not regarded as disabled, as a matter of law.

Having found that plaintiff is not disabled within the meaning of the ADA, plaintiff has failed to establish a prima facie case. There is, therefore, no need to analyze the second prong of plaintiff's prima facie case--whether he was "otherwise qualified" to perform the essential functions of the mail carrier position, and the third prong--whether defendant failed to provide plaintiff reasonable accommodation.

IV. CONCLUSION

For the foregoing reasons, Medical College's motion for summary judgment will be granted. Judgment will be entered in favor of Medical College and against plaintiff. An appropriate order follows.

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MEDICAL COLLEGE (TENET),	:	
	:	
Defendant.	:	

ORDER

AND NOW, this **10th** day of **December**, 2004, upon consideration of Defendant Medical College's Motion for Summary Judgment (doc. no. 16), it is hereby **ORDERED** that the Motion is **GRANTED**.

It is **FURTHER ORDERED** that Judgment is entered in favor of Defendant and against Plaintiff.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.